

REMARKS

Claim 21-23 are amended and claim 24 is canceled herein. Claims 3 and 19-23 will be pending in the application following entry of the above amendments.

The following remarks are responsive to the final Office action dated May 10, 2004.

Response to Objection to Drawings

Figures 1-4 have been amended in response to the objections raised in paragraph 3 of the final Office action.

Fig. 6 has been amended in response to the objections raised in paragraph 3 of the final Office action.

Figure 7 has been added herein to show certain features recited in the claims as required by paragraphs 2 and 4 of the Office action. More particularly, Fig. 7 has been added to illustrate one of the loop fasteners 84, 85 as comprising a nonwoven material attached to an elastic substrate whereby the nonwoven material is gathered. Support for the added drawing can be found at least at page 23, lines 8-11; page 26, lines 22-25; page 27, lines 2-30; page 28, line 1 through page 29, line 27; and in the claims of the application as originally filed.

The amendments made to Figs. 1-4 and 6, and the addition of Fig. 7, are submitted to place the drawings in proper form for allowance.

Response to Objections to the Specification

In response to paragraph 5 of the final Office action, the Abstract has been amended to remove the term "said."

In response to paragraph 6 of the final Office action, Fig. 3 is amended herein to delete reference number 78 and the

lead line extending therefrom. The paragraph at page 23, line 8 has also been amended as suggested in the final Office action.

Additional amendments have been made to the specification to reference new Fig. 7. These amendments do not add new matter as discussed above with regard to applicants' response to the drawing objections.

At paragraph 7 of the final Office action, the Office takes the position that the amendment to the paragraph at page 27, line 2 (at lines 25-31 thereof) made in applicants' Amendment B filed February 20, 2004 introduces new matter into the disclosure. Applicants respectfully disagree.

Two amendments are reflected in the passage cited by the Office as constituting new matter. The first relates to the deletion of the sentence "[s]uitable nonelastomeric retractive materials . . . polyether block amides (PEBAX) . . .;" and to the subsequent addition of the polyether block amides (PEBAX) to the list of suitable elastomeric retractive materials. This amendment was made to correct an obvious error in the specification; both the error and correction of which would be obvious to anyone skilled in the art. Polyether block amides are conventionally known elastomeric materials. A particularly well-known polyether block amide is known as PEBAX and is available from Atofina Chemicals, Inc. of Philadelphia, Pennsylvania. The undersigned invites the Office to visit Atofina's website at www.atofina.com for evidence that PEBAX is an elastomeric material and not a non-elastomeric material as originally (and erroneously) specified by applicants.

The second amendment is the addition of the term "elastomeric" after the trade designation LYCRA. The addition of the term elastomeric was in response to the Office's prior

suggestion that generic descriptions follow trade designations. The sentence in question states that "[s]uitable elastomeric retractive materials," and further identifies LYCRA as one such elastomeric material. It is clear, then, that LYCRA is already called out in the specification as being an elastomeric material, with or without the addition of the term elastomeric following the trade designation LYCRA to generically describe the LYCRA material. However, should the Office maintain its assertion that addition of the term still constitutes new matter, applicants are willing to delete such term.

In view of the above, the specification is submitted to be in proper form for allowance.

Response to Rejection of Claims Under 35 U.S.C §112

Reconsideration of the rejection of claims 21-23 under §112 is respectfully requested. These claims are believed to be properly directed to the combination of the fastening system and the article on which the fastening system is mountable.

Response to Rejection of Claims Under 35 USC §102

Claim 19

Claim 19 is directed to a hook and loop mechanical fastening system for an article in which the loop component of the fastening system is mountable on the article and is capable of elastic stretching (e.g., elongating upon application of an elongating force and subsequent retraction upon removal or reduction of the elongating force) in at least two directions (e.g., a machine direction and a cross-machine direction of the loop component). The loop component is constructed of a neck-stretched non-woven material attached directly to an elastic

substrate that is elastically stretchable in at least two directions. That is, there is no intervening non-elastic or non-extensible films or other non-elastic or non-extensible materials between the non-woven material and the elastic substrate.

Specifically, claim 19 recites a mechanical fastening system for an article wherein the mechanical fastening system comprises:

a) a loop component mountable on the article and capable of elastic stretching in at least two directions, said loop component comprising a neck-stretched non-woven material and an elastic substrate, said elastic substrate being elastically stretchable in at least two directions, said non-woven material being attached directly to the elastic substrate; and

b) a hook component mountable on the article and capable of fastening engagement with the loop component to secure the article in a fastened configuration;

c) whereby when the hook component is juxtaposed and engaged with at least a portion of the loop component, the loop component is stretchable during limited movement of the loop component relative to the hook component.

Claim 19 is submitted to be patentable over the references of record, and in particular U.S. Patent No. 5,910,136 (Hetzler et al.), in that whether considered alone or in combination the references fail to show or suggest a mechanical fastening system including a loop component that is mountable on an article, capable of elastic stretching in at least two directions, and is constructed of a neck-stretched non-woven material attached directly to an elastic substrate.

Hetzler et al. disclose oriented polymeric microporous (e.g., breathable) films with flexible polyolefins. The film,

or a breathable laminate constructed from the film, is disclosed as being useful in absorbent articles such as a diaper (80) as shown in Fig. 3, including using a non-woven portion of a laminate constructed from the film as the loop portion of a hook and loop combination. The Office's position is that such a loop portion is stretchable in multiple directions and is based on the characterization of the film (and hence the laminate constructed from the film) disclosed by Hetzler et al. as elastic. Respectfully, applicants reiterate that this is not the case.

The invention disclosed by Hetzler et al. is a microporous film, i.e., a film having micropores so that the film is breathable. At column 3, line 47 through column 7, line 3, Hetzler et al. disclose the "flexible polyolefins" that can be used to initially form the film, and further disclose that the polyolefin resin may optionally include an elastomeric thermoplastic material. However, this is only an intermediate condition of the film and is clearly not the final form in which the film is used (e.g., to make a laminate). Rather, Hetzler et al. disclose that the film must subsequently be stretched so that the film substantially thins and micropores form therein. The film is annealed to stay in this condition and no longer meets the definition of elastic as set forth in the present application. For example, as described in Example 1 (at column 13, lines 48-54) of Hetzler et al., the film, or laminates made from the film, are preheated, stretched and annealed so that the film or laminate made therefrom remains in the stretched condition.

Hetzler et al. thus fail to disclose or suggest a fastening system including a loop component constructed of a neck-stretched non-woven material attached directly to an

elastic substrate that is elastically stretchable in at least two directions. That is, the film (and laminate) disclosed by Hetzler et al. is not elastic. Consequently, a loop fastener constructed from such a film cannot be elastically stretchable in at least two directions.

None of the passages relied upon by the Office in paragraph 12 of the final Office action disclose the film and/or laminate as being elastically stretchable in multiple directions in its final (e.g., in use) form. The only passage in which the laminate is referred to as being stretchable at all is at column 9, lines 26-36. However, the laminate disclosed by Hetzler et al. at this passage is only in an intermediate form. Hetzler et al. clearly disclose that after stretching, the laminate is annealed to maintain the laminate in the stretched condition. After such processing, the final laminate is not elastic.

At paragraph 16 of the final Office action, the Office takes the position that not all embodiments taught by Hetzler et al. are inelastic. Applicants respectfully disagree. In the event the Office maintains its rejection of claim 19 in view of Hetzler et al., applicants respectfully request that the Office cite the particular embodiments (by column and line number) of Hetzler et al. which the Office asserts are elastic in final form so as to better frame the issues for appeal.

In view of the above, claim 19 is submitted to be unanticipated by and patentable over Hetzler et al.

Claim 3 and claims 20-23 depend directly or indirectly from claim 19 and are submitted to be unanticipated by and patentable over the Hetzler et al. and the other references of record for the same reasons as claim 19.

Response to Rejection of Claims Under 35 USC §103

Applicants also request reconsideration of the rejection of claim 19 as being obvious in view of the combination of U.S. Patent No. 5,883,028 (Morman '028) with Hetzler et al. Specifically, applicants disagree with the Office's position that it would have been obvious in view of Hetzler et al. to use the breathable elastic film/non-woven laminate of Morman '028 to form a loop component of a mechanical fastening system for an article.

In determining whether a case of prima facie obviousness exists, it is necessary to ascertain whether the prior art teachings would appear to be sufficient to one of ordinary skill in the art to suggest making the claimed substitution or other modification. Obviousness can only be established by modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references or in the knowledge generally available to one of ordinary skill in the art. MPEP ' 2143.01 citing In re Kotzab, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000). The mere fact that a prior art reference may be modified to obtain the claimed invention does not make the claimed invention obvious if there is no suggestion or motivation in the reference to make the modification. In re Mills, 916 F.2d 680, 682, 16 U.S.P.Q.2d 1430, 1432 (Fed. Cir. 1990). The prior art must provide one of ordinary skill the motivation to make the proposed modifications. In re Lalu, 747 F.2d 703, 705, 223 USPQ 1257, 1258 (Fed. Cir. 1984). Such motivation is clearly lacking in this case.

The essence of claim 19 is that by providing a loop component capable of elastic stretching in at least two directions, upon stretching during use only some of the

engagement points between the hooks and loops are separated, and the some of the hooks are able to reattach to a different spot in the loop component as it contracts (thereby reducing pop opens of the fastening system). See, e.g., page 26, line 23 through page 27, line 1.

Morman '028 discloses a breathable laminate comprised of a non-woven web secured to an elastic film. The breathability of the laminate renders it useful as an outer cover for diapers and other personal care products, and surgical gowns. See column 1, lines 49-53 of Morman '028. There is no disclosure or teaching found in Morman '028 of forming a loop component of a mechanical fastening system that is elastically stretchable in at least two directions.

Hetzler et al. do disclose using the inelastic laminate disclosed therein as a loop fastener.

There is no suggestion or teaching found in either Morman '028 or Hetzler et al. that would motivate one skilled in the art to replace the loop fastener of Hetzler et al. with the laminate disclosed by Morman '028. That such a replacement can be made does not render the replacement obvious. Rather, there must be some motivation found in the references to make such a replacement. None is provided by either of the references. That is, neither of the references teach the desire to provide a multi-direction elastically stretchable loop component to thereby increase engagement with the hook component. Such motivation can only be improperly gleaned from the present application.

For these reasons, claim 19 is submitted to be non-obvious and patentable over the references of record.

Claims 3 and 20-23 depend directly or indirectly from claim 19 and are submitted to be nonobvious and patentable over the references of record for the same reasons as claim 19

CONCLUSION

In view of the above, applicants respectfully request favorable consideration and allowance of claims 3 and 19-23 as now presented.

Respectfully submitted,



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